



POLICE DEPARTMENT CITY OF NEW YORK

October 23, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Thomas Morton  
Tax Registry No. 925787  
9<sup>th</sup> Precinct  
Disciplinary Case No. 2016-16240  
-----

**Charges and Specifications:**

1. Said Police Officer Thomas Morton, assigned to the 73 Precinct, while on-duty, on or about June 20, 2015, was absent from said assignment without permission or police necessity at approximately 2230 hours and failed to make the necessary notifications upon leaving his assigned post.

P.G. 203-05, Page 1, Paragraph 2 - PERFORMANCE ON DUTY - GENERAL  
GENERAL REGULATIONS

2. Said Police Officer Thomas Morton, assigned to the 73 Precinct, while on-duty, on or about August 17, 2015, located in Kings County, did fail and neglect to maintain a clean appearance, in that Police Officer Morton was unshaven while in uniform.

P.G. 203-07, Page 2, Paragraph 10 - PERFORMANCE ON DUTY - PERSONAL  
APPEARANCE

**Appearances:**

For the Department: Jordan Farnham, Esq.  
Department Advocate's Office  
One Police Plaza, 4th Floor  
New York, NY 10038

For Respondent: John Tynan, Esq.  
Worth, Longworth & London, LLP  
111 John Street – Suite 640  
New York, NY 10038

**Hearing Dates:**

September 13 and September 20, 2017

**Decision:**

Specification 1: Guilty in Part  
Specification 2: Guilty

**Trial Commissioner:**

ADCT Jeff S. Adler

## REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 13 and September 20, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Lieutenant Jose Vega, Sergeant Nigel Fenton, and Lieutenant Eduard Dombrovski as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

## DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty in Part of Specification 1, for failure to make a notification upon leaving his post, and Guilty of Specification 2, for being unshaven while in uniform.

## FINDINGS AND ANALYSIS

In June, 2015, police officers from various commands were temporarily assigned to the 73<sup>rd</sup> Precinct in Brooklyn as part of the summer All-Out program. The officers were placed in high visibility foot posts. One of those officers was Respondent, who on June 20 was assigned to Post 4. Respondent is accused of being absent from his post that day without permission, and not making the necessary notification upon leaving his post. In a second matter, Respondent is accused of being unshaven when he appeared for duty on August 17, 2015.

Lieutenant Eduard Dombrovski, who was the 73<sup>rd</sup> Precinct's Integrity Control Officer ("ICO") at the time of both incidents, testified that just prior to the June 20<sup>th</sup> incident, the precinct's Commanding Officer informed the ICO that he was unhappy with the performance of

some of the All-Out officers and wanted certain problems to be addressed. Specifically, officers were not adequately responding to the quality-of-life conditions in the precinct. Also, some of the officers were off-post, and some were observed slumping against walls and not wearing their uniform hats. (Tr. 110, 156)

At roll call on June 20<sup>th</sup>, the all-out officers, including Respondent, were instructed regarding these concerns. Respondent and two other officers were assigned to Post 4, at the corner of Union Street and Sutter Avenue. Lieutenant Dombrowschi testified that he and Sergeant Fenton, the assistant ICO, then drove around the precinct in an unmarked vehicle to inspect the different posts. At approximately 2030 hours, they arrived at Post 4 and observed Respondent and two other officers standing away from the corner, as if "hiding" between trees and houses on the sidewalk up the block. According to Lieutenant Dombrowschi, the officers were taking no action regarding a group of people who had started to gather at the location. Respondent was not wearing his hat. The lieutenant spoke with Respondent about his hat, and instructed the officers to address the conditions, and then he and the sergeant left the location. (Tr. 111-113, 126)

About an hour-and-a-half later, the lieutenant and sergeant drove back to Union and Sutter, observed a larger crowd of civilians congregating and drinking, but Respondent and the other two officers were nowhere in sight. Lieutenant Dombrowschi testified that he and the sergeant drove around the block looking for the officers for about 15 minutes, to no avail. The lieutenant tried to raise them on the radio to determine their whereabouts. One of the officers quickly responded, stating that they were on Sutter and Pitkin Avenues, though those streets do not actually intersect. A few minutes later, Respondent and the other two officers walked back to the corner of Union Street and Sutter Avenue, and stated they had gone to use the restroom at the E 98<sup>th</sup> Street subway station, which was off-post more than one block away. The officers

stated to the lieutenant that they had not made any notifications about leaving their post.

Lieutenant Dombrowschi informed the officers that they would each be receiving a command discipline ("CD") for being off post; two of the officers ultimately accepted the discipline, but Respondent did not. (Tr. 115-121, 131, 134-135, 139, 161-162)

Lieutenant Dombrowschi also testified that on August 17, he removed Respondent from roll call and brought him to his office in order to discuss the status of the CD for the June 20<sup>th</sup> incident. According to the lieutenant, Respondent, who was in uniform, was unshaven, with "significant facial hair." When confronted about his appearance, Respondent stated that it was a minor violation. Though he acknowledged that he did have the discretion to treat this infraction as a minor violation, Lieutenant Dombrowschi felt that Respondent was speaking to him in a condescending, disrespectful manner, and so he decided to issue an additional CD to Respondent for being unshaven. The lieutenant did not, however, instruct Respondent to shave at that time. (Tr. 122-124, 144-145, 149-151, 154, 159)

Sergeant Nigel Fenton, the Assistant ICO with the 73<sup>rd</sup> Precinct, confirmed that at roll call on June 20<sup>th</sup>, the all-out officers, including Respondent, were instructed regarding the Commanding Officer's concerns. Sergeant Fenton testified that he and Lieutenant Dombrowschi then drove around the precinct in an unmarked vehicle to check on the officers. At approximately 2030 hours, they arrived at Post 4, and observed Respondent and two other officers at the location. According to Sergeant Fenton, the officers were taking no action regarding a group of about 10 people who were congregating on the sidewalk, apparently drinking. The lieutenant instructed the officers to deal with the situation, and then he and the sergeant left the location. (Tr. 43, 45-47, 80)

About two hours later, the lieutenant and sergeant drove back to Post 4, observed the same civilians congregating, but Respondent and the other two officers were nowhere in sight.

Sergeant Fenton testified that he and the lieutenant drove around looking for the officers for about 10 minutes, covering a two-block radius surrounding the post, to no avail. The lieutenant repeatedly tried to raise them on the radio to determine their whereabouts until one of the officers finally responded, stating that they were on East New York and Sutter Avenues, though those streets do not actually intersect. A few minutes later, Respondent and the other two officers walked back to the corner of Union Street and Sutter Avenue, and stated that they had gone to use the restroom. Sergeant Fenton testified that the officers had not made any notifications regarding leaving their post, though it is unclear how the sergeant knew this since he did not check with the desk. Lieutenant Dombrowschi informed the officers that they would each be receiving a CD for being off post; two of the officers ultimately accepted the discipline, but Respondent did not. (Tr. 48-53, 85, 88, 97)

Sergeant Fenton also testified that on August 17, at the start of roll call, Respondent came to his office along with Lieutenant Dombrowschi, to discuss the penalty on the CD from the June 20<sup>th</sup> incident. According to Sergeant Fenton, Respondent, who was standing at the doorway about 10 feet away, was unshaven, with a "visible beard on him." The sergeant acknowledged that it was not a full grown beard, but maintained that he observed Respondent with "facial hair" as opposed to "clean shaved skin." Respondent did not produce a note exempting him from the requirement of being clean-shaven, and so he was issued an additional CD. According to Sergeant Fenton, Respondent stated to the lieutenant, "That's not a command discipline, that's a minor violation." (Tr. 55-58, 94)

Lieutenant Jose Vega, the Special Operations Lieutenant with the 73<sup>rd</sup> Precinct, testified that he was responsible for overseeing the All-Out officers in the summer of 2015. He did not recall whether Respondent was unshaven on August 17. He did, however, recall speaking with Respondent on other occasions about being unshaven, at least one of which was prior to August

17. Lieutenant Vega did not discipline Respondent on any of those occasions; instead, he relied on Respondent to take care of the situation himself. (Tr. 18-20, 25, 29, 33) Also, Lieutenant Vega spoke with Lieutenant Dombrowschi on more than one occasion about Respondent's appearance. (Tr. 26, 35)

Respondent testified that he did not receive any special training about the boundaries of the 73<sup>rd</sup> precinct or the precinct's particular conditions. At approximately 2220 hours on June 20, 2015, he took a "personal" break to use the restroom. One of the two officers with whom he was working knew there was a restroom at the E 98<sup>th</sup> Street train station, so the three officers walked there together. While there, they received a call from the ICO, and one of the other officers answered. The three officers returned to the post a minute or two later and informed Lieutenant Dombrowschi that they were on a personal. Nevertheless, the lieutenant told the officers that they would be issued CD's for being off-post. (Tr. 168, 172-174, 184) A copy of Respondent's activity log entry, showing that he was out on a personal, was admitted into evidence as Resp. Ex. A. Respondent admitted, though, that he did not call in a notification upon leaving his post. (Tr. 187-188)

Regarding the second incident, Respondent testified that when Lieutenant Dombrowschi informed him that they needed to discuss the CD from June 20, Respondent told him that he wanted his PBA representative present. According to Respondent, the lieutenant then stated that he would be receiving an additional CD for being unshaven. Respondent said, "I am fine," meaning that he was shaven. Respondent asked the lieutenant why he would make it a CD, but was not disrespectful toward him. He also denied that he had ever been approached in the 73<sup>rd</sup> precinct about being unshaven before that date. (Tr. 174-175, 178-180, 188) Respondent introduced into evidence a photograph of himself that he claimed was taken by his partner at a

nearby firehouse less than 10 minutes after he left the lieutenant's office (Resp. Ex. C). (Tr. 175-176)

Specification 1 is comprised of two parts, accusing Respondent of being absent from his post without permission or police necessity, and failing to make the necessary notifications upon leaving his post. Section 203-05 (2) of the Patrol Guide requires officers to "remain on post until properly relieved, except for police necessity, personal necessity or meal period." Although the priority is to have the officers be at the assigned location, both Lieutenant Dombrowschi and Sergeant Fenton explained that officers are permitted to go one block off post. The same Patrol Guide section also instructs officers to notify the telephone switchboard operator, and, if possible, make an entry in their activity log, before leaving their post. Both Lieutenant Dombrowschi and Sergeant Fenton testified that this notification requirement serves the important safety function of allowing the Department to keep tabs on the whereabouts of its officers at all times.

Regarding the first portion of the specification, even though the credible evidence has proven that Respondent left his post on the evening of June 20, 2015, the record has failed to establish that the act of *leaving* his post constituted misconduct. Respondent explained that he needed to use the restroom, and so he used a "personal" to walk to the E 98<sup>th</sup> Street train station. As Lieutenant Dombrowschi acknowledged, officers generally are permitted two such 20-minute personal breaks during their shift. Since Respondent was on a personal break, his mere absence from the post does not constitute misconduct.

However, since the train station on E 98<sup>th</sup> Street was more than one block away from his post, Respondent was required to notify the telephone switchboard operator. Although neither ICO checked with the desk to see if Respondent had called in, the officers at the scene stated they did not make a notification. Respondent confirmed he made no such notification in his trial

testimony. For his failure to notify the telephone switchboard operator upon leaving his post, I find Respondent guilty in part of Specification 1.

Regarding Specification 2, section 203-07 of the Patrol Guide requires officers to be "neat and clean." Additionally, officers are instructed not to grow a beard unless granted an exemption. Here, both Lieutenant Dombrovski and Sergeant Fenton testified in a straightforward, convincing manner that they observed Respondent to be unshaven at the start of his tour on August 17. The lieutenant stated that Respondent was unshaven with "significant facial hair," while the sergeant described Respondent as unshaven with a "visible beard." The photograph in evidence, which has no time stamp and is not particularly clear, was taken sometime later, and was not reliable evidence of Respondent's appearance at the time he was in the lieutenant's office. I credit the testimony of the lieutenant and sergeant that Respondent was unshaven while in uniform, and find Respondent guilty of Specification 2.

### PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on March 1, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no formal disciplinary history.

The Advocate recommends that Respondent forfeit five (5) vacation days. That recommendation is excessive. In the first specification, Respondent has only been found guilty in part, since his action in leaving his post to use the restroom on a "personal" did not constitute misconduct. Also, this tribunal is mindful that Respondent, who has no disciplinary history, was new to the command and on a temporary assignment. That did not, however, excuse Respondent



from making the proper notification upon leaving his post. In order to satisfy its public safety mandate, the Department needs to rely on its officers either to be at their posts, or to provide notification in the event they need to leave their posts. Additionally, Respondent failed to maintain a neat appearance while on duty and in uniform, and so some accountability is necessary.

Taking into account all the facts and circumstances in this matter, I recommend that Respondent forfeit three (3) vacation days.

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner Trials

**APPROVED**

DEC 14 2017  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER THOMAS MORTON  
TAX REGISTRY NO. 925787  
DISCIPLINARY CASE NO. 2016-16240

Respondent was appointed to the Department on March 1, 2000.

On his last three annual performance evaluations, Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" in 2016, and two overall ratings of 4.0 "Highly Competent" in 2015 and 2013.

[REDACTED]

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler  
Assistant Deputy Commissioner Trials